

This is a pre-print of a chapter to be published in Brent Steele and Eric Heinze (eds), *Routledge Handbook on Ethics and International Relations* (London and New York: Routledge, 2018).

“The ethical terrain of international human rights: From invoking dignity to practicing recognition”

Patrick Hayden

Contact details

School of International Relations, University of St Andrews, The Scores, St Andrews, KY16 9AX, UK.

Email: jph10@st-andrews.ac.uk

Introduction

It is now commonplace to declare that we live in an age of rights.¹ Indeed, it is fair to say that the global popularity of human rights has reached the point where, as Alan Gewirth phrases it, many people regard them as fundamental to the “civilizing and moralizing of human life.”² However, while no topic arguably is as vital to international ethics, questions remain about what our rights are, who is entitled to claim certain rights, and how these rights should be implemented and enforced. The purpose of this chapter is to provide a guide to the intricate relations between the institutional development of international human rights, the central ethical principles offered to support human rights norms, and the politics of human rights. To this end, I draw inspiration from recent attempts to understand the making of rights claims as performative social and political practices. On this understanding, I propose that, for us to attend properly to the political significance of claiming rights, we should approach human rights and dignity as the achievements of generative struggles for recognition. In the first section, I offer a brief account of the translation of the idea of human rights into international legal norms and political institutions, focusing on the International Bill of Human Rights. In the middle section, I bring analytical attention to bear upon the ethical underpinnings of international human rights, characterized in terms of the four pillars of dignity, liberty, equality, and solidarity. Finally, I offer some reflections on the ways by which rights claims are positioned, in performative terms, as emergent political struggles to achieve reciprocal recognition, equal status, and human dignity.

The international human rights system

Human rights are, by definition, universal in scope. This is because they are supposed to be the rights that persons have simply by virtue of being human, thereby extending to all human beings in all times and all places.³ Although the current idea of human rights derives from earlier philosophical and religious sources—most prominently the natural law and natural rights traditions that inspired the European Enlightenment and the revolutions of the eighteenth century—the contemporary human rights system and associated body of international law is a product of the second half of the twentieth century.⁴ There were some complementary exceptions of course, such as the various treaties to abolish the slave trade (1862, 1885, 1890) and the Geneva (1864, 1899, 1907) and Hague (1899, 1907) Conventions setting out the obligations of states to allow for the provision of humanitarian assistance to

sick, wounded, and captured soldiers. In addition, the International Labour Organization was established following the First World War to develop labour regulations intended to protect workers' rights, and the League of Nations introduced limited measures to protect ethnic, linguistic, and religious minorities in parts of Europe.⁵ Yet there was little effort by governments to adopt a formal system of internationally recognized human rights. This situation changed dramatically in the wake of the mass atrocities perpetrated by the Nazi government and the subsequent establishment of the United Nations and its affiliated agencies. The decolonization movement of the 1950s and 1960s also contributed to the historical circumstances inspiring the formation of human rights law in international affairs.

The contemporary human rights regime that developed concurrently with and under the auspices of the United Nations system constitutes a set of norms, institutions, and procedures that most states now accept as binding to some degree.⁶ The Preamble to the UN Charter states that the fundamental objectives of the UN are partly to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." Article 1 of the Charter states that the UN is also intended to achieve international cooperation in "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."⁷ Although the Charter refers to human rights in several places, it does not define what those rights are. Thus one of the first tasks the UN assumed was to draft a document that would specify consensually-agreed human rights norms, a task delegated to the Commission on Human Rights (CHR) chaired by Eleanor Roosevelt.⁸ The work of the CHR resulted in the Universal Declaration of Human Rights (UDHR) which according to its Preamble serves as a "common standard of achievement for all peoples and all nations."⁹ The UDHR was unanimously adopted by the UN General Assembly on 10 December 1948. Because the UDHR is a resolution and not a treaty, it is not legally binding. However, over time the majority of the provisions of the UDHR have come to be accepted as part of customary international law.¹⁰ In addition, the UDHR has been supplemented by two treaties that, when ratified by signatory states, give human rights binding force in international law, both of which were adopted by the General Assembly in 1966 and entered into law in 1976: the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). States parties to these and other human rights treaties assume primary responsibility for protecting and enforcing the rights of individuals within their jurisdiction, under the supervision of the UN as well as numerous regional and intergovernmental bodies, while individuals and NGOs have secondary responsibility to critique state practices when these violate or fail to promote human rights.¹¹ Indeed, one of the primary concerns of international human rights law is to encourage states to reform their political-legal systems in order to achieve the domestic guarantee of basic rights and freedoms. When differences between national and international standards do exist, the latter are supposed to supplement the former and in that way secure the same rights for all persons even though they live within different domestic jurisdictions. Since the adoption of the UDHR, the human rights system has expanded enormously, evolving new conceptions of rights and a multitude of declarations, conventions, and Charter-based and treaty-based human rights bodies. Two notable developments include the creation of the position of UN High Commissioner for Human Rights in 1993 and coordination of the Universal Periodic Review process—which monitors each member state's fulfilment of its human rights obligations and commitments in a four year-cycle—by the Human Rights Council (successor to the Commission on Human Rights) since 2008.¹²

At the heart of the human rights system remains what is known as the “International Bill of Human Rights,” which consists of the UDHR together with the ICCPR and ICESCR. Both covenants proclaim that states must undertake to respect and ensure the following rights: to life and personal integrity and security; to freedom from torture and cruel, inhuman and degrading treatment or punishment; to freedom from coercion, slavery, and forced labor; to due process of law and to a humane and working penal system; to freedom to travel within and outside one’s country; to freedom of thought, conscience, religion, expression, assembly, and association; and to take part in the conduct of government and public affairs (including the right to vote and be elected). The dominant themes in the ICCPR are equality (equal treatment, equal protection of the law, equality of opportunity) and nondiscrimination on the bases of race, color, sex, language, religion, opinion, origin, birth, and status. In connection with nondiscrimination, members of minorities within states also are granted the rights, in community with other members of their group, to enjoy their culture, practice their religion, and use their language.¹³

According to the ICESCR, states are supposed to take steps “individually and through international assistance and cooperation . . . to the maximum of their available resources . . . with a view to achieving progressively full realization”¹⁴ of the following rights: to work; to just and favourable conditions of work, including leisure; to join trade unions and to strike; to social security; to social protection of the family, mothers, and children; to an adequate standard of living, including adequate food, clothing, housing, medical care, and social services; to the highest possible standards of physical and mental health; to education and training; and to take part in the cultural life of the community and benefit from any scientific progress therein. Again, the themes of equality and nondiscrimination are dominant in this Covenant.

According to the standards established by the International Bill of Human Rights, human rights are to be both international and universal, applicable to all persons within and across states. In addition, basic or fundamental human rights are thought to be inviolable individual entitlements; in other words, they are supposed to work as superior norms, generally having priority when in conflict with other weighty norms, values or goals (e.g., the greater good), and resistant to cost-benefit trade-offs.¹⁵ The rights articulated in the International Bill are also viewed as interdependent and protective of a range of fundamental moral and public goods.¹⁶ Interdependent human rights embody aspects of both “negative” rights and “positive” rights. Negative rights are principles not to impede or coerce other individuals from participating in securing, protecting, and promoting the conditions in which they may exercise their rights. Positive rights are principles to aid and cooperate with other individuals in securing, protecting, and promoting the conditions in which they may exercise their fundamental rights and liberties. Civil and political rights are sometimes characterized as negative rights insofar as they entail the freedom of individuals from governmental interference. Economic, social, and cultural rights are frequently characterized as positive rights insofar as they require the promotion of governmental policies designed to create the social conditions that enable individuals to exercise their rights and freedoms effectively. It is clear, though, that effective enjoyment of civil and political rights often requires state assistance providing for the basic socio-economic rights of individuals—such as food, education, health, and shelter—while the progressive realization of economic, social, and cultural rights requires safeguards against the possible abuse of supporting civil-political rights—such as the right to life, freedom of speech, due process of law, and political participation—by the actions of government.¹⁷ Furthermore, a concern with community and cultural pluralism is expressed in the UN human rights framework: the International Bill

recognizes a number of human rights that must be exercised by individuals as members of different racial, ethnic, economic and religious groups, in the understanding that membership and participation in those groups are essential to a life of dignity. Thus, the right of individuals in a community with others to practice and observe their religion is an integral part of freedom of religion and might forbid establishing measures on the part of the state whose effects are the impairment of that right. Of special importance are the cultural rights of minority cultures within multinational states; thus, Article 27 of the ICCPR ensures to members of those cultures in community with others the right to preserve their distinctive language, religion and, ultimately, their “way of life.”¹⁸

The human rights system continues to develop and change over time in response to various social, cultural, political, and economic concerns while retaining its aspiration of mitigating injustice and abuses of state power. The International Bill is now complemented by a number of “core” human rights treaties that address, inter alia, the elimination of racial and gender discrimination, protection against torture and forced disappearance, and the rights of women, children, migrants, and persons with disabilities; each core treaty has its own committee of experts to monitor implementation of treaty obligations by its states parties. The core human rights treaties have been joined by numerous declarations of emerging entitlements, which may eventually become codified as legally-binding conventions. Most recently, the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the UN General Assembly on September 13, 2007. Human rights norms also have penetrated into cognate areas of global politics that bear on individuals’ rights to be treated with humanity, including refugees and internally displaced people, genocide, forced labour, human trafficking, climate change, and global poverty. Thus, despite lacking strong enforcement mechanisms and sanctioning powers, the human rights system has not remained static. It is constantly changing, with states constructing new conceptions of the nature and content of rights, and devising new mechanisms for the promotion and protection of international standards in response to shifting global circumstances.¹⁹

The moral architecture of international human rights

The previous section established that since the end of the Second World War, the promotion and protection of human rights has rapidly assumed increased global salience. It is no exaggeration to suggest that the UDHR has become “the moral touchstone for all claims at the international level.”²⁰ Indeed, in the Final Declaration and Programme of Action produced at the 1993 World Conference on Human Rights in Vienna, more than 170 states endorsed the universality and indivisibility of human rights first articulated in the UDHR, confirmed the legitimacy of the global human rights regime, and reaffirmed the idea that “it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect human rights and fundamental freedoms.”²¹ Consequently, there is today “not a single nation, culture or people that is not in one way or another enmeshed in human rights regimes.”²² Despite the troubling gaps that exist between human rights rhetoric and human rights abuses, a significant body of human rights law now occupies a prominent place in world politics. Human rights, however, are not only institutionalized legal standards. Such rights are properly called “human” rights because they furnish us with a critical vision of what it means to be human in society with others. Consequently, they are not simply a functional scheme for coherence of the international order but also possess their own normative content and potent trajectory.

Aside from demonstrating the expansive role played by human rights at the international level, as well as indicating how claims for human rights have mushroomed since 1948, the

most important issue in the contemporary rights framework is the search for a shared understanding of the normative foundation(s) for human rights. This project has been surrounded by controversy, however, as the standards professed in the UDHR were conceived first and foremost as a set of practical norms amenable to political consensus between diverse peoples from all over the world. International human rights are, as Charles Beitz points out, a “public doctrine” arising from a “collective political enterprise.”²³ The collection of rights contained in the International Bill is not expressly associated with any specific religious faith, metaphysical theory, or philosophical worldview, so that the list of rights in principle can be associated with and interpreted from a variety of traditions and perspectives.²⁴ Attempts to ground human rights theoretically—that is, to provide justifiable reasons for why there are human rights at all and why they should be prized so highly—are thus characterized by philosophical heterogeneity and extrinsic tensions, but by considerable overlap as well. The vast and ongoing philosophical argument about the adequate grounds for human rights—ranging widely across “foundationalist” and “nonfoundationalist” approaches—is beyond the scope of this chapter.²⁵ Such debates are crucial nonetheless to providing the dynamic for the continuing development of how human rights are both conceived and practiced, and demonstrate that there are in fact several possible bases to justify rights morally (which may also help prevent human rights from simply becoming a matter of dogma). While acknowledging the complexity of mediating among different justifications, this section will briefly set out a propositional grounding for human rights as provided by the French jurist René Cassin, one of the main drafters of the UDHR. Cassin compared the Declaration to the portico of a temple resting on four cornerstones corresponding to “dignity, liberty, equality, and brotherhood.”²⁶ Cassin’s simple imagery of the architecture of the UDHR yields four interlocking principles that can be broadly agreed to underpin all categories of human rights, and which encapsulate the aspirations of people throughout history who have struggled against domination and for fundamental interests they deem vital for a properly human life.

The first cornerstone of the human rights doctrine is the concept of human dignity.²⁷ Most influentially, the Preamble to the UDHR states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” Article 1 reiterates the first principle that “all human beings are born free and equal in dignity and rights.”²⁸ The idea of dignity adopted in the UDHR reflects a characteristically modern understanding of the intrinsic, inalienable worth of the individual as a human being. While the origin of the English term is found in the Latin word *dignitas*, meaning nobility of status attached to a role, rank, or office, the concept has been formulated in different ways throughout its intellectual history.²⁹ In the classical natural law tradition, dignity designated a hierarchical distinction between what is worthy and unworthy, whether referencing a privileged aristocratic elite or certain types of conduct considered to be morally superior. Thus some people (e.g., a monarch or religious leader) and actions (e.g., donating charity) merit “worthiness” while others (e.g., profiting through deceit) do not. An important feature of this view is that it correlates dignity with morally obligatory duties, rather than to anything to which a person has a right as such. Yet the concept of dignity underwent a pivotal symbolic shift between the fifteenth and eighteenth centuries under the influence of Renaissance humanism, coming to signify equal human worth attributed to all persons as opposed to unequal social rank bestowing superiority on some and inferiority on others.³⁰ Immanuel Kant (echoing Cicero) played a key role in this metamorphosis with his deontological injunction to treat “humanity” always “as an end, never merely as a means.”³¹ Kant’s account emphasizes that all human beings have an intrinsic moral worth entirely independent of their position in a social hierarchy, which

should never be violated by treating them as if they are potentially usable means to an end. The Kantian idea of respect for human dignity became the central insight behind the modern natural rights tradition—namely, that the inviolability of human dignity correlates to the inviolability of a person’s moral rights—before then informing the human rights discourse to the point that the two concepts now are seen to be inseparable.³² On the one hand, to respect a person means to respect their human rights while, on the other hand, to violate a person’s rights is to violate their human dignity; rights violations, in other words, connote a sense of indignation, humiliation, or degradation in particularly egregious cases of mistreatment.

This connection between human dignity and human rights is reiterated in the ICCPR and ICESCR. The Preambles to both Covenants affirm that “the equal and inalienable rights of all members of the human family . . . derive from the inherent dignity of the human person.”³³ Importantly, then, the notion of dignity as treating each human being with the respect they deserve serves not only as the principal normative justification for all human rights but, further, as a yardstick against which to set the relevant conditions whereby everyone may enjoy civil and political as well as economic, social, and cultural rights. One such essential and defining condition is equality.³⁴ The principle of equality implied by statements equating equal worth with equal rights contains two elements: the formal and the substantive (or material). Formal equality follows from the nondiscrimination provision in Articles 2 and 7 of the UDHR, which affirms that everyone is entitled to human rights without distinction of any kind, such as nationality, race, religion, age, gender, sexual orientation, economic background, or disability. Formal equality thus concerns itself with ensuring that legal and political processes provide equal protection to all citizens, prohibiting discriminatory policies that arbitrarily deny the rights of some or accord special treatment to the rights of others. The value of formal equality lies, in part, in the way it draws our attention to the prevalence of differences between people in society, and supports the contention that respect for human rights means all rights-holders ought to be treated equally. Substantive equality reflects the fact that social conditions exhibit systemic patterns of inequality that persist over time, which may arbitrarily disadvantage some individuals by undermining their prospects for exercising rights in a manner that is meaningfully equal to those with greater material advantages. Many international human rights instruments therefore promote positive duties on the state to remedy preexisting disadvantages, provide equality of opportunity, and uphold a cluster of interrelated rights meant to establish minimum conditions needed to achieve a dignified human existence, including primary education, adequate subsistence, basic healthcare, fair remuneration in employment, and social security.³⁵ Formal and substantive equality sometimes overlap and sometimes compete within human rights discourse and practice, of course, suggesting that equality remains a fragile and contested norm. Liberal and socialist theorists, for instance, have frequently (and often unproductively) debated the relative priority of formal and material equality, and many countries adopting neoliberal market-based economic policies oppose the redistributive consequences implied by socio-economic rights.³⁶

The third cornerstone of liberty associates dignity and rights with the human capacity to freely choose what to do and to be in the autonomous conduct of our lives, a capacity deemed by many to be central to the moral status of personhood.³⁷ The principle of liberty reflects an image of “the ideal of free human beings,” as expressed in the preambles to the ICCPR and ICESCR.³⁸ The appeal to liberty as a condition to which all humans are entitled is one of the most compelling claims within human rights discourse, regularly serving as a powerful and indeed revolutionary platform for social struggles against innumerable forms of subordination and domination; historically, the right to liberty repeatedly appears as the right to liberation

or emancipation.³⁹ The moral demand of respect for individual freedom comprises both negative and positive liberty. On the one hand, it means being free from unwarranted external constraints on or coercive interference with our life plans, choices, beliefs, and goods. Being free from slavery, torture, and arbitrary arrest, detention, or exile represents basic negative liberties. But on the other hand, liberty also requires being free to pursue possible courses of action, to exercise powers of choice, and to achieve preferred goals or ends to which one aspires, provided such actions are compatible with the equal liberties of others.⁴⁰ The kind of liberty at issue in the human rights framework also has a dual aspect, looking simultaneously to the private and the public freedoms of all persons. Hence the rights enumerated in the International Bill include freedom of thought, conscience and religion, as well as freedom of movement, freedom to organize politically, freedom of speech and press, and freedom to vote and take part in government. Taken together, the negative and positive, and the private and public, facets of liberty ground a cluster of rights that aim to secure both freedom from oppression as well as the means and opportunities for exercising self-transforming activity (whether individually or in association with others).⁴¹

The final cornerstone of the human rights structure is controversial and elusive, yet it has proved indispensable to widening the idea of human rights in general. “Fraternity” entered the lexicon of rights with the French Revolution of 1789 and subsequently inspired widespread demands for social inclusion in the spirit of human unity. This universalist vision of unity amongst the peoples of all countries on the basis of common concerns, goals, or activity—popularized in the nineteenth century by the motto “*Unus pro omnibus, omnes pro uno*” (“One for all, all for one”)—was later taken up by Article 1 of the UDHR, which declares that all human beings “should act towards one another in a spirit of brotherhood.”⁴² The idea of universal “brotherliness” is now usually embodied in the language of solidarity.⁴³ Solidarity has often been regarded as an arbitrary affective force in contemporary political thought, one that is either too weak to promote the constitutional juridification of rights, or that, in its emotive volatility, is a threat to stable social cohesion.⁴⁴ There can be little doubt that the great rallying cry of solidarity has a certain revolutionary allure capable of inspiring fierce antagonism towards political and economic systems regarded as gross affronts to human dignity. Nevertheless, the quest for solidarity is predominantly empowering; it can motivate sentiments of togetherness conducive to political action between people who are situated differently in the world and foster collective commitments to progressive social transformation that may advance the cause of justice—even across territorial boundaries.⁴⁵ Solidarity’s international or transnational role in human rights is seen in Article 28 of the UDHR: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”⁴⁶ By incorporating solidarity as an essential entitlement for the achievement of a suitably just world society, normative human rights discourse identifies solidarity as a two-way street: states should not only think of human rights in terms of costs and benefits for themselves but also in larger terms of collective goods applied to the world as a whole. States therefore should choose to work with each other—assuming shared responsibility for cooperative human rights schemes—in order to achieve outcomes ultimately beneficial to humanity as a whole. The 1986 Declaration on the Right to Development, for example, holds that states “have the duty to co-operate with each other . . . to promote a new international economic order based on sovereign equality, interdependence, [and] mutual interest.”⁴⁷ Similar concerns for reciprocal normativity animated decolonial struggles for independence and the right to self-determination, and continue to stimulate transnational movements for post-imperial social justice linking the Global North and South.⁴⁸ Solidarity, then, may be interpreted as not only a right in itself but as one of the social conditions supporting the realization of all other human rights.

Struggles for dignity and the politics of rights recognition

The moral edifice of the international human rights system rests upon the main pillars of dignity, freedom, equality, and solidarity. In political terms, however, the challenge for human rights is not simply to presume a dignity intrinsic to the self but to make oneself recognized by others. Political struggles for human rights exploit precisely this ambiguity: they might articulate a perfectly intelligible claim to dignity in the abstract, but the key is to gain public recognition and acknowledgement from a community of others of what in practice turns out to be palpably concrete identities—often based on a combination of intersecting characteristics—and particular situations of grievance. Although formally an assertion of antecedent moral principles, the politics of human rights points to the fact that rights claims are performative acts whereby the claimant opens up a public scene of persuasion, negotiation, and diffusion through which rights themselves are engendered, practiced, and, when successful, accepted by those to whom the claims are addressed.⁴⁹ The notion of performativity has its conceptual origins in the speech-act theory of J. L. Austin, according to which the performance of linguistic utterances (such as rights claims) is a species of action.⁵⁰ On the performative position, rights claiming practices have the potential to disrupt and transform conventional understandings of self, other, and community—in other words, to shift prevailing meanings of who we are as plural human beings, thereby foregrounding questions of inclusion and exclusion.⁵¹ A performative understanding of the activity of rights claiming thus sees rights, as well as human dignity, as intersubjective political achievements between people rather than subjective possessions within them. These achievements should be regarded as only ever provisionally settled, however, and always subject to “complex processes of public argument, deliberation, and exchange through which universalist rights claims are contested and contextualized, invoked and revoked, posited and positioned throughout legal and political institutions, as well as in the associations of civil society.”⁵²

Human rights claims, therefore, are not simply invocations of a priori norms but performative utterances of particular normative meanings and beliefs within the relational contexts of social coexistence. On this view, rights morph from being fixed objects possessed by essential subjects to being dynamic social practices through which rights and the subjects who claim them are mutually constituted.⁵³ Revisions of our moral–political identities go hand in hand with ongoing refigurations of the normative values of dignity, liberty, equality, and solidarity. Consider how myriad members of racial, religious, sexual, or ethnic minorities deemed of unequal worth and standing have rhetorically reshaped understandings and practices of equality through particular deployments of human rights language across space and time, repositioning themselves from “outside” to “inside” humanity. Hence mutual recognition between different individuals as subjects with rights to be respected, protected, and fulfilled within political communities is, I suggest, the first political step toward the active realization of human dignity. The dynamic process of mutual recognition, in other words, underscores how practices of making (and, for that matter, unmaking) the value and status of human dignity are pervasive features of our political lives with others.

Performative theory points us towards paying closer attention to how speech-acts accomplish, rather than merely represent, the core principles of dignity, liberty, equality, and solidarity on which human rights rely. In so doing, it challenges two recurring assumptions in the history of thinking about human rights: first, that rights are “free-floating” values that operate external to social, symbolic, and institutional contexts; and second, that once rights claims have been established they will remain permanently fixed or securely perpetuated over time.

Neither assumption does proper justice to the extent to which successful rights claims emerge out of and are shaped by concrete historical struggles—whether it be against racism, sex and gender discrimination, economic exploitation, or oppression—and the degree to which they remain relatively effective only when rearticulated and repositioned by future socio-political interventions. Emphasizing how achieving human rights and the situated struggles for dignity, equality, liberty, and solidarity are intertwined, highlights the way in which the concept of “recognition” is at the heart of the political dimension of human rights. One of the advantages of rooting human rights in social processes of recognition is that it frames the condition of being human, and therefore of human dignity, as a political status, that is, as an achievement of existing experience rather than a mere natural object.

Taking its cue from Hegel’s famous depiction of the master–slave dialectic in the *Phenomenology of Spirit*,⁵⁴ the model of social recognition posits that the identity and agency of the subject is established in the context of intersubjective relations with others. Herein, not only is consciousness and identity shaped through dialectical mediations of self and other, but our sense of self-worth is tied to the ways in which others recognize us and how we recognize others. This implies that the freedom and dignity of both self and other arises through reciprocal affirmation of symmetrical claims to equal recognition and respect. The broader point is that the type of egalitarian relationship necessary for enacting and enjoying human rights claims presupposes empowering individuals as equal peers in political representation, participation, and decision-making.⁵⁵ The “vital human need” for recognition, as Charles Taylor puts it,⁵⁶ thus extends to acknowledging not only the presumed equal worth of individuals but even more so to what Joel Feinberg refers to as their “recognizable capacity to assert claims” regarded as socially meaningful or institutionally legitimate.⁵⁷ Axel Honneth contends that rights are “depersonalized symbols of social respect.”⁵⁸ What this means is that human rights express a general public recognition that particular human beings are deserving of—that is, entitled to—the political and legal status of rights-bearers; this is another way of rendering Hannah Arendt’s notion of the “right to have rights.”⁵⁹ Arendt’s point is that the subject of human rights, as an agent capable of enacting rights claims, does not exist in the abstract but as a fellow person acknowledged as such by others within a shared web of legal and political practices that implement equality. Thus the performance of due recognition of equal status is an action indispensable to individuals developing a sense of self-respect as responsible political agents. As Honneth argues, public recognition constitutes an experience in which “one is able to view oneself as a person who shares with all other members of one’s community the qualities that make participation” possible.⁶⁰

This brings us to another crucial insight regarding the relationship between recognition and rights, centered on the problem of political inclusion and exclusion. While social recognition denotes the positive experience of reciprocally extending due respect to the equal status, dignity, and rights of others, it also implies the negative experience of misrecognition, to wit, the failure to value individuals and their rights or to recognize them only in a way that ignores, distorts, or devalues their social, political, and personal experiences. Honneth identifies three pivotal experiences of asymmetric misrecognition or “disrespect”: abuse, torture and other violations of physical integrity; denigration of individual or collective ways of life and cultural practices; and denial of equal rights and of equal standing as a full-fledged member of a political community.⁶¹ Misrecognition is most injurious to socially vulnerable individuals and groups: the poor and destitute; racial, ethnic, and religious minorities; women and children; the disabled; and gay, lesbian, bisexual and transgender people (as well as to those who may be several of these simultaneously). Those who are not recognized in terms of dominant identities often are regarded as inferior, defective, threatening, or of being

otherwise essentially constituted in a way that makes them less deserving of equal respect and status. In contrast, a critical recognition approach argues that possessing human rights is not “a matter of being constituted in a certain way” but “of being afforded a certain sort of social recognition” that acknowledges our constitutive differences as being compatible with establishing political equality.⁶² This is because any attempt to specify the underlying generic properties of what it is to be a human being will almost inevitably exclude “some groups of humans [who] fail to meet the criteria.”⁶³ One of the most important insights that Honneth offers is that the experience of misrecognition can inaugurate resistance and social movements demanding the expansion of relations of mutual recognition and political inclusion. The search for recognition is an irrepressible motivational impetus for the subordinated and excluded to challenge hierarchical deprivations of dignity and rights by means of the very act of claiming to be equal.⁶⁴

An example of the pivotal importance of this performative moral grammar of struggles for recognition—which is another way of describing the demand for equal humanity and equal rights by the excluded themselves—can be seen in the fight for access to essential antiretroviral medicines by South Africa’s Treatment Action Campaign (TAC). TAC emerged in 1998 as part of both the transnational movement for universal healthcare justice and the human right to health, and the grass roots campaign for access to adequate medical treatment and essential medicines on behalf of HIV-infected individuals in South Africa.⁶⁵ Combining rights-based public interest litigation with assorted performative devices such as symbolic positioning, ethical–political narratives, and publicly engaged argumentation, TAC mounted a compelling drive for the production of and importation into South Africa of affordable generic medicines.⁶⁶ By positioning itself as a successor to the antiapartheid struggle, TAC invoked a powerful narrative that recollected a defiant people united in solidarity against social injustice and political subordination. Moreover, they also portrayed those needing antiretroviral drugs as concurrently embodying the basic principles of “human dignity, equality and freedom” applicable to all citizens under the new South African Constitution,⁶⁷ as well as the distinctive vulnerabilities of specific communities of people living with HIV/AIDS, such as pregnant women and homeless children. Finally, out of a belief that structural change, such as expanding the scope of healthcare delivery, is unlikely to be achieved without also affecting “hearts and minds,” TAC deployed rhetorical devices, such as when Nelson Mandela famously wore a TAC t-shirt at one of their demonstrations in 2002, dramatizing the figurative transformation of racist, sexist, homophobic, and other discriminatory stereotypes. With the help of these performative acts, TAC provided a significant material and symbolic connection with the public that enabled a stigmatized section of South African society to repudiate an imposed sense of inferiority as to their status in society and move forward as equal human rights-bearing agents in the political realm.

Such examples can be multiplied in many other contexts and from various different perspectives: India’s Dalits leveraging an international network of solidarity NGOs to challenge local and national caste-based discrimination;⁶⁸ San farm workers in Namibia asserting labour and housing rights against institutional attempts to anchor their group identity to a traditional hunting and gathering lifestyle;⁶⁹ LGBTQIA activist coalitions in all world regions, including Southeast Asia, contesting multiple forms of “heteronormative” exclusion and violence on the basis of sexual orientation and gender identity;⁷⁰ Colombian activists using “people’s tribunals” to publicize peasant land dispossession and violence against indigenous communities committed by state-linked paramilitaries and multinational corporations;⁷¹ and more than 200 NGOs helping to create a Women’s Court in Sarajevo, giving women a public space to tell about their experiences of rape and sexual violence

during the wars in the former Yugoslavia throughout the 1990s, thereby empowering them as legal and political right-holders and not simply passive victims.⁷² The striking resonance with the politics of recognition as an enactment of equal human status, dignity, and rights is clear. Each of these struggles for rights and recognition was at pains to show that rights violations also should be seen as lived experiences of misrecognition that demonstrate a lack of respect and concern for the dignity of those affected. Hence, misrecognition involves a symbolic devaluation of the very idea of shared humanity. The performative features of the search for recognition illustrate, therefore, that successful recognition of equal human rights depends, however precariously, upon reciprocal acknowledgement of equal and inclusive belonging between self and other.⁷³ In this way recognition amounts to a social practice which brings into existence the very rights the act of claiming aspires to achieve.

Conclusion

Because of their discursive elasticity and pragmatic availability, human rights claims have been expanded into the social, political, and legal entitlements of previously excluded individuals and groups since the end of the Second World War. This chapter sought to clarify that human rights function simultaneously as an institutional–legal scheme, a moral–normative stance, and a social–political struggle. In all these forms, the prominence of the contemporary quest for human rights is attributable to the degree to which it has affected not only the domestic and international conduct and policies of states, but also the practices and influence of a constantly expanding range of nongovernmental organizations, advocacy groups, and social movements committed to an assortment of human rights causes. At the same time, I have underscored that the strength and effectiveness of any human rights ascription depends on performative practices of seeking and extending reciprocal recognition of equal human status. In many ways, human rights represent performative figurations for portraying what it means to live a dignified human existence or, conversely, what it means to suffer unacceptable dehumanizing indignities in our relations with others. Rather than signalling a single, unchanging human nature untouched by the realities of social coexistence, human rights embody ethical and political practices that human beings constantly work out for accepting and engaging with one another on equal terms. For this reason, analyses of human rights also must reckon with the fact that the normative, political, and institutional elaborations of rights will always exceed their empirical manifestations; struggles in support of particular human rights will always be confronted with strong countertendencies and outright refusals and will never yield a final, straightforward triumph. From the perspective offered here, however, the power of human rights is less a matter of definitive success than the pervasive capacity of subjects to undertake continually evolving practices of declaring, negotiating, and recognizing their specific claims to liberty, equality, solidarity, and dignity.

End notes

¹ Norberto Bobbio, *The Age of Rights* (Cambridge: Polity, 1996).

² Alan Gewirth, “Duties to Fulfill the Human Rights of the Poor,” in *Freedom from Poverty as a Human Right: Who Owes what to the Very Poor?*, ed. Thomas Pogge (Oxford: Oxford University Press, 2007), 236.

³ Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca: Cornell University Press, 2003), 1.

⁴ See Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2010).

⁵ Mark Mazower, “The Strange Triumph of Human Rights, 1933–1950,” *The Historical Journal* 47 (2004): 379–98.

-
- ⁶ Roger Normand and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice* (Bloomington: Indiana University Press, 2008).
- ⁷ Charter of the United Nations (26 June 1945), <http://www.un.org/en/charter-united-nations/>.
- ⁸ Mary Anne Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001).
- ⁹ Universal Declaration of Human Rights (10 December 1948), <http://www.un.org/en/universal-declaration-human-rights/index.html>.
- ¹⁰ Roozbeh B. Baker, "Customary International Law in the 21st Century: Old Challenges and New Debates," *European Journal of International Law* 21 (2010): 173–204.
- ¹¹ Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 115.
- ¹² See Hilary Charlesworth and Emma Larking, eds., *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge: Cambridge University Press, 2014).
- ¹³ International Covenant on Civil and Political Rights (16 December 1966), <http://www.refworld.org/docid/3ae6b3aa0.html>.
- ¹⁴ International Covenant on Economic, Social and Cultural Rights (16 December 1966), Art. 2(1), <http://www.refworld.org/docid/3ae6b36c0.html>.
- ¹⁵ The International Bill sets out, however, circumstances in which certain limitations on and temporary derogations of rights are permissible, such as during national or international emergencies.
- ¹⁶ The Vienna Declaration and Programme of Action, adopted by the 1993 UN World Conference on Human Rights, emphasizes that human rights are treated as "indivisible and interdependent and interrelated." The World Conference of Human Rights, Vienna Declaration and Programme of Action, ¶5, July 12, 1993, <http://www.refworld.org/docid/3ae6b39ec.html>.
- ¹⁷ See Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd ed. (Princeton: Princeton University Press, 1996); and James W. Nickel, "Rethinking Indivisibility: Toward a Theory of Supporting Relations between Human Rights," *Human Rights Quarterly* 30 (2008): 984–1001.
- ¹⁸ International Covenant on Civil and Political Rights, Art. 27, <http://www.refworld.org/docid/3ae6b3aa0.html>.
- ¹⁹ See Christian Reus-Smit, *Individual Rights and the Making of the International System* (Cambridge: Cambridge University Press, 2013).
- ²⁰ Thomas Franck, *Nation against Nation* (New York: Oxford University Press, 1985), 232.
- ²¹ Vienna Declaration and Programme of Action, ¶5, <http://www.refworld.org/docid/3ae6b39ec.html>.
- ²² Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999), x.
- ²³ Beitz, *The Idea of Human Rights*, 102–103.
- ²⁴ Johannes Morsink, *Inherent Human Rights: Philosophical Roots of the Universal Declaration* (Philadelphia: University of Pennsylvania Press, 2009).
- ²⁵ For a survey of these approaches, see Guglielmo Verdirame, "Human Rights in Political and Legal Theory," in *Routledge Handbook of International Human Rights Law*, ed. Scott Sheeran and Nigel Rodley (London: Routledge, 2013), 25–48.
- ²⁶ René Cassin, "La Déclaration universelle et la mise en oeuvre des Droits de l'homme," *Recueil des cours de l'Académie de droit international* 79 (1951): 278.
- ²⁷ Patrick Capps, *Human Dignity and the Foundations of International Law* (Oxford: Hart Publishing, 2009).
- ²⁸ Universal Declaration of Human Rights, Preamble and Art. 1, <http://www.un.org/en/universal-declaration-human-rights/index.html>.

-
- ²⁹ Jeremy Waldron, "Citizenship and Dignity," in *Understanding Human Dignity*, ed. Christopher McCrudden (Oxford: Oxford University Press, 2013), 327.
- ³⁰ See Jeff Malpas and Norelle Lickiss, eds., *Perspectives on Human Dignity* (Dordrecht: Springer, 2007); and Michael Rosen, *Dignity: Its History and Meaning* (Cambridge, MA: Harvard University Press, 2012).
- ³¹ Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Cambridge: Cambridge University Press, 1997), 38.
- ³² Jürgen Habermas, "The Concept of Human Dignity and the Realistic Utopia of Human Rights," *Metaphilosophy* 41 (2010): 464–80.
- ³³ International Covenant on Civil and Political Rights, Preamble, <http://www.refworld.org/docid/3ae6b3aa0.html>; International Covenant on Economic, Social and Cultural Rights, Preamble, <http://www.refworld.org/docid/3ae6b36c0.html>.
- ³⁴ See Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977), and Allen Buchanan, "The Egalitarianism of Human Rights," *Ethics* 120 (2010): 679–710.
- ³⁵ The human rights emphasis on substantive equality is deeply implicated in the 2000 Millennium Development Goals and the 2015 Sustainable Development Goals.
- ³⁶ Paul O'Connell, "On Reconciling Irreconcilables: Neoliberal Globalization and Human Rights," *Human Rights Review* 3 (2007): 483–509.
- ³⁷ James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008). Some critics contend that this belief is a peculiarly modern and Western conceit.
- ³⁸ International Covenant on Civil and Political Rights, Preamble, <http://www.refworld.org/docid/3ae6b3aa0.html>; International Covenant on Economic, Social and Cultural Rights, Preamble, <http://www.refworld.org/docid/3ae6b36c0.html>.
- ³⁹ Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the End of the Century* (Oxford: Hart, 2000).
- ⁴⁰ Alan Gewirth, *Human Rights: Essays on Justification and Applications* (Chicago: University of Chicago Press, 1982).
- ⁴¹ Carol C. Gould, *Globalizing Democracy and Human Rights* (Cambridge University Press, 2004), 33–34.
- ⁴² Universal Declaration of Human Rights, Art. 1, <http://www.un.org/en/universal-declaration-human-rights/index.html>.
- ⁴³ Hauke Brunkhorst, *Solidarity: From Civic Friendship to a Global Legal Community* (Cambridge, MA: MIT Press, 2005), 1–2.
- ⁴⁴ Lawrence Wilde, "The Concept of Solidarity: Emerging from the Theoretical Shadows?," *British Journal of Politics and International Relations* 9 (2007): 171–81.
- ⁴⁵ Carol C. Gould, "Transnational Solidarities," *Journal of Social Philosophy* 38 (2007): 148–64.
- ⁴⁶ Universal Declaration of Human Rights, Art. 28, <http://www.un.org/en/universal-declaration-human-rights/index.html>.
- ⁴⁷ Declaration on the Right to Development (4 December 1986), Art. 3(3), <http://www.refworld.org/docid/3b00f22544.html>.
- ⁴⁸ See Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 2010).
- ⁴⁹ Seyla Benhabib refers to this dynamic of public claims making as the "jurisgenerative" potential of rights; see *Dignity in Adversity: Human Rights in Troubled Times* (Cambridge: Polity, 2011), 125.
- ⁵⁰ J. L. Austin, *How to Do Things with Words* (Oxford: Oxford University Press, 1961).
- ⁵¹ Karen Zivi, *Making Rights Claims: A Practice of Democratic Citizenship* (Oxford: Oxford University Press, 2012), 16–19, 46–47.

-
- ⁵² Benhabib, *Dignity in Adversity*, 16.
- ⁵³ See Andrew Vincent, *The Politics of Human Rights* (Oxford: Oxford University Press, 2010), 180ff.
- ⁵⁴ G. W. F. Hegel, *The Phenomenology of Spirit*, trans. A. V. Miller (Oxford: Oxford University Press, 1977), 114–17.
- ⁵⁵ Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Cambridge: Polity, 2008), 28–29.
- ⁵⁶ Charles Taylor, “The Politics of Recognition,” in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton: Princeton University Press, 1994), 26.
- ⁵⁷ Joel Feinberg, *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 1980), 151.
- ⁵⁸ Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Cambridge: Polity, 1995), 118.
- ⁵⁹ Hannah Arendt, *The Origins of Totalitarianism* (New York: Schocken Books, 2004), 376–77.
- ⁶⁰ Honneth, *The Struggle for Recognition*, 120.
- ⁶¹ *Ibid.*, 131–35.
- ⁶² Derrick Darby, *Rights, Race, and Recognition* (Cambridge: Cambridge University Press, 2009), 132.
- ⁶³ Anne Phillips, *The Politics of the Human* (Cambridge: Cambridge University Press, 2015), 40.
- ⁶⁴ Axel Honneth, *Disrespect: The Normative Foundations of Critical Theory* (Cambridge: Polity, 2007).
- ⁶⁵ For more information on the history of TAC and its various campaigns, consult the group’s website at <http://www.tac.org.za/>.
- ⁶⁶ Mark Heywood, “South Africa’s Treatment Action Campaign: Combining Law and Social Mobilization to Realize the Right to Health,” *Journal of Human Rights Practice* 1 (2009): 14–36.
- ⁶⁷ The Constitution of the Republic of South Africa provides that “[e]veryone has the right to have access to health care services” and that “[n]o one may be refused emergency medical treatment.” South Africa Const. § 27.
- ⁶⁸ Clifford Bob, “‘Dalit Rights Are Human Rights’: Caste Discrimination, International Activism, and the Construction of a New Human Rights Issue,” *Human Rights Quarterly* 29 (2007): 167–93.
- ⁶⁹ Renee Sylvain, “Class, Culture, and Recognition: San Farm Workers and Indigenous Identities,” *Anthropologica* 45 (2003): 105–13.
- ⁷⁰ Anthony J. Langlois, “Human Rights, ‘Orientation,’ and ASEAN,” *Journal of Human Rights* 13 (2014): 307–21.
- ⁷¹ Lara Montesinos Coleman, “Struggles, Over Rights: Humanism, Ethical Dispossession and Resistance,” *Third World Quarterly* 36 (2015): 1060–75.
- ⁷² Janine Natalya Clark, “Transitional Justice as Recognition: An Analysis of the Women’s Court in Sarajevo,” *International Journal of Transitional Justice* 10 (2016): 67–87.
- ⁷³ See Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004).